HIGH COURT OF CHHATTISGARH, BILASPUR

Transfer Petition (Criminal) No. 04 of 2007

PETITIONER Rohit Kumar Kashyap, S/o Late Shri Ramji Kashyap, Aged about 26 years, R/o Vill. Sarai Patera P.S.H. Lormi, Distt. Bilaspur (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh, Through PSH Lormi, Distt.-Bilaspur (C.G).
2. Sanjai Pandey, S/o Munalal Pandey, Aged about 34 years, R/o Vill. Sarai Patera, PSH Lormi Distt. Bilaspur (C.G.)
3. Krishna Kumar Kashyap, S/o Shobha Ram Kashyap, Aged about 51 years, R/o Vill. Sarai Patera, PSH Lormi, Distt.-Bilaspur (C.G.)

Transfer Petition under Section 407 Cr.P.C

Appearance:

Shri J.K. Shastri, counsel for the petitioner.

Shri Arun Sao, Govt. Advocate for the State/ respondent No.1 on advance copy.

ORAL ORDER
(15.06.2007)

Sunil Kumar Sinha, J.

Heard on admission.

This petition has been filed for transfer of Sessions Trial No.390/2006 (State Vs. Sanjai Pandey & ano.) pending in the Court of Additional Sessions Judge, Mungeli, District-Bilaspur (C.G.).

Learned counsel for the petitioner submits that the petitioner is the complainant, who is son of the deceased. He submits that the public prosecutor as well as counsel for the complainant had filed 3 applications (Annexures-P/1, P/2 & P/3) under Sections 344 & 311 of Cr.P.C. respectively on 30.3.2007, 25.4.2007 & 10.5.2007 but the same are not

being decided by the trial Court and usual proceedings of the trial is being conducted by it. His further submission is that the trial Court has examined the Investigating Officer as P.W.-15, whereas many other witnesses are still left to be examined and on these grounds, he prays for transfer of the case from the said Court showing that the complainant (son of the deceased) apprehends that he will be deprived of fair justice from the Court.

I have heard learned counsel for the petitioner at length and have also examined the records of the transfer petition.

So far as first application dated 30.3.2007 under Section 344 Cr.P.C. is concerned, it has been made by counsel for the complainant for initiating appropriate proceedings against P.W. 4- Suresh Kumar & P.W. 9 – Virendra Gupta because they have not supported the case of prosecution, whereas earlier, as stated, they had filed an affidavit in favour of the complainant.

So far as other two applications under Section 311 Cr.P.C. are concerned, application dated 25.4.2007 has been filed for giving permission to examine Smt. Krishna Bai, Keshav Kashyap and Punaram, whereas other application dated 10.5.2007 has been filed by counsel for the complaint for examination of Ramkumar Gupta, Girwar Singh Rathore, Premkumar Kashyap and Thaneshwar Kashyap.

The main grievance of the petitioner is that these applications are kept pending and the Court is not taking any decision on these applications.

The law with regard to transfer of cases is well settled. The Apex Court held in the matter of ***Gurucharan Dass Chadha –Vs- State of Rajasthan, AIR 1966 S.C. 1418*** that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. The

Apex Court said that a petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. The Apex Court further held that it is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. The Apex Court also said that to judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.

It was further held by the Apex Court in the matter of ***Mrs. Maneka Sanjay Gandhi and another –Vs- Miss Rani Jethmalani, AIR 1979 S.C. 468*** that assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievance. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. The Apex Court, in the facts and circumstances of the case, said that the grounds for the transfer have to be tested on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried. It further said that even so, the process of justice should not harass

the parties and from that angle the court may weigh the circumstances.

If we apply the above principles in the facts and circumstances of the present case, it cannot be inferred that the complainant genuinely entertains an apprehension that he would be deprived of justice and such instances, quoted by the complainant, would not be treated as ground for entertaining such an apprehension by him.

In the opinion of this Court, no case for transfer of sessions trial is made out on the grounds raised by the petitioner. The petition has no merit and the same is dismissed at the motion stage.

However, looking to the points raised by the petitioner regarding not deciding 3 applications filed before the Sessions Court, it is observed that the Sessions Court shall dispose of all those applications by passing appropriate order on them in accordance with law.

Sd/-
SUNIL KUMAR SINHA
Judge

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